

## **CSW – Presentation to Senate Natural Resources, Environment and Great Lakes Committee on November 3rd**

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My name is Shay Wideman and I am here today representing MRP Properties, LLC a Brownfield's Redevelopment Company with LUST projects in Michigan<sup>1</sup>. I am the Environmental Director, and currently have projects in 24 states. I have been in the industry for more than 21 years, and have been responsible for all aspects of soil and groundwater remediation. I am here today to talk to you about the difficulties in achieving site closure in Michigan, and hope to provide insight into how the State of Michigan compares to other states.

Across the US, there is a backlog of open LUST Cases. Michigan is one of the top ten states with a significant backlog<sup>2</sup>. I believe that this is primarily due to the ever changing regulatory climate in the state.

As you know, LUST sites are regulated by Part 213. To the best of my knowledge, there have been no significant statutory changes since 1995. However, there have been sweeping changes in the interpretation that have consistently sent responsible parties backwards in time with each new interpretation. This has created a situation where sites spend a prolonged period in the assessment phase, and therefore appear to be stalled. This has brought the costs to closure in Michigan well above the majority of other states, and has created a great deal of uncertainty in the path to closure. States that have provided a clear road map to get this accomplished have been the most successful, and have the least backlog.

Prior to the year 2000, the State had a fairly straight forward approach to site cleanups, and from 1994 to 2000 closed over 7,000 sites<sup>2</sup>. That significantly dropped off in 2000, and has continued to decline ever since.

In 2000, the State began to interpret the rules to require assessment to residential standards, without regard to the actual use of the site. This required additional offsite access and kept sites in the assessment phase for years due to increased negotiations with third parties.

In 2001, the State started claiming that utilities such as sewers and telephone conduits were "waters of the state." So utilities were treated the same as lakes, rivers, and streams. This again delayed cleanup of sites and needlessly kept projects in the assessment phase.

In 2007, the MDEQ began adopting a unique definition of free product based on individual constituents in soil instead of actual observation. Instead of analyzing soil contamination such as gasoline as a mixture, the DEQ treated each individual component of gasoline separately. Even if free product was not present, the site is treated as such based on this data. This has kept many sites in a high priority phase without justification.

I have projects in other Great Lake States such as Wisconsin, and Minnesota. I also have projects throughout the mid-west and western US. All of these states have a stable platform to meet assessment and remediation criteria. Their implementing regulators are also focused on this clean criteria and the process towards closure.

Currently, Part 213 is an audit based regulation. DEQ Project Managers are not in a position to follow the sites to closure. Years of field work and reports are submitted to the DEQ without any response. When we submit a Closure Request and it is audited, it routinely has a request for information that was submitted many years prior to the Closure Request.

Texas has perhaps the most straight forward risk based closure strategy, and leads the nation in backlog reduction. Regulators are qualified to make decisions about sites and work hand in hand with the responsible party to assure sites are moving forward. There are clear definitions as to what assessment is, and what actions need to be taken to bring a site to closure.

Similar to Michigan, California does not have a single clear path to closure. However it does have dedicated regulators assigned to each case who reads the reports submitted and regularly communicates that review with the responsible party. California also has an appellate process where the State Water Board can be petitioned to hear the matter providing prompt opportunity to resolve questions.

I prefer the regulatory climate in California over Michigan.

I believe that the regulatory structure in Michigan has been the number one reason for the backlog of Open LUST Sites. The current laws fail to provide the framework for a true Risk Based process to closure.

I have reviewed the various Senate Bills that you are considering, and feel that they are a step in the right direction. When the regulated community is given a map, we do a good job of following it which is evidenced in the closures we have achieved throughout the US.

I am available for any questions you may have at this time.

- (1) – MRP Properties currently has 11 Active Projects in several MDEQ Districts
- (2) – EPA OSWER-OUST Report – “The National LUST Cleanup Backlog: A Study of Opportunities – State Summary: Michigan” – September 2011